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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-1135

In the Matter of

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Debtor,

Petitioner,

GEORGE P. BAKER, RICHARD C. BOND, AND JERVIS LANGDON, JR., TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, Debtor,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit, is reported at 469 F.2d 857. It is reprinted in the Appendix to the Petition (Pet. A. 1a-27a). The opinion of the United States District Court for the District of New Jersey is not reported. It is printed in the Appendix to the Petition (Pet. A. 32a-59a).

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit (Pet. A. 28a) was entered November 7, 1972. The petition for rehearing *in banc* was denied by Order dated December 13, 1972 (Pet. A. 30a). The petition for a writ of certiorari was filed on February 16, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Does the holding of the United States Court of Appeals that an admiralty court has exclusive jurisdiction over the distribution among claimants of the *res* in its Registry in a limitation of liability proceeding and that a District Court before which one of the parties to the admiralty proceeding subsequently sought reorganization lacked jurisdiction to adjudicate distribution of such *res* warrant review by this Court?

STATUTES INVOLVED

Limitation of Vessel Owner's Liability, 46 U.S.C. §§181-196, of which §183(a) and §185 are set forth in the Appendix to this brief *infra*, (A. 1a-2a).

Section 77 of the Bankruptcy Act, 11 U.S.C. §205 is set forth in the Appendix to the petition, at 62a.

STATEMENT OF THE CASE

The facts are undisputed.

On March 3, 1966, the vessel Santa Isabel, owned by Grace Line, Inc., (Grace Line) rammed and severely damaged a drawbridge which spans the Raritan River between

South Amboy and Perth Amboy, New Jersey. The drawbridge was part of the 39.36 miles of railroad and appurtenant facilities, extending from Perth Amboy to Bay Head, New Jersey, owned and operated by the New York and Long Branch Railroad Company (Long Branch) and used by Central Railroad Company of New Jersey (now Trustee of the Central Railroad Company of New Jersey, Debtor) (C.N.J.) and the Pennsylvania Railroad Company (now George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees of the property of Penn Central Transportation Company, Debtor) (Penn Central). In consequence, all three railroads suffered damages.

Long Branch is a railroad subject to the jurisdiction of the Interstate Commerce Commission pursuant to the provisions of the Interstate Commerce Act, 49 U.S.C. §§1, *et seq.*, was incorporated on April 8, 1868, and exists under the laws of the State of New Jersey. See, *New York & L. B. R. Co., Securities*, 158 I.C.C. 365 (1929). As of March 3, 1966, all of the outstanding capital stock and bonded indebtedness of Long Branch was owned in equal shares by Penn Central and C.N.J., but C.N.J.'s holdings in Long Branch were pledged under a trust agreement, dated December 1, 1963, which trust agreement is now in default. By reason of the default, C.N.J.'s holdings in Long Branch are presently held by the United States Department of Justice.

On March 3, 1966, and throughout the transactions relating to this dispute, the Board of Directors of Long Branch consisted of twelve members, the majority of whom were persons other than officers of C.N.J. or Penn Central, which met regularly and assumed the responsibilities and exercised the authority inherent in its capacity. Long Branch has in excess of 250 full-time employes, who are directly responsible for the operation and maintenance of its

railroad, including the Raritan River drawbridge. In addition, some personnel, who are also employes of C.N.J. and Penn Central, devote a portion of their activities to various supervisory capacities for Long Branch. Both prior and subsequent to March 3, 1966, the Raritan River drawbridge sustained other damages for which Long branch made claims and obtained recoveries.

An agreement (Agreement) dated January 31, 1930, by and between Long Branch, Penn Central and C.N.J. governs the use of Long Branch's railroad facilities by the other two railroads. The Agreement continued the separate existence of Long Branch as a railroad. Article 5, Section 3 of the Agreement requires C.N.J. and Penn Central to advance to Long Branch, in equal amounts, such sums as Long Branch might require to meet emergencies.

Immediately after the collision it was obvious to the three railroads that operations over the bridge would be suspended for an indefinite period of time thus creating an emergency for the railroads and the public. Long Branch at once made the necessary arrangements for repairs and contracted for materials, construction, and substituted bus service. Although it appeared that such expenses would eventually be reimbursed from the proceeds to be realized from Grace Line by way of suit or settlement, Long Branch required immediate funds to meet the emergency.

Because of its poor cash position, C.N.J. was unable to meet its obligation to Long Branch under Article 5, Section 3 of the Agreement. By an exchange of letters between C.N.J. and Penn Central, referred to in the court below as "Letters of Agreement," it was agreed that Penn Central would advance to Long Branch $740,482.95 to meet its emergency expenses (Penn Central's half share

and C.N.J.'s half share); that all proceeds received by way of insurance or suit against Grace Line by Long Branch, C.N.J. and Penn Central, would be paid first to Long Branch in order that it could repay all of the advances made by Penn Central, and that Penn Central and C.N.J. would share in the balance of the proceeds to satisfy their individual damages. It was further agreed that prior to the receipt of such proceeds, all proceeds received by Long Branch from any sale of its real estate would be applied in reduction of Penn Central's advances to Long Branch, and C.N.J. would pay Penn Central 6% interest on the amount advanced on its behalf. The balance sheets of Long Branch showed the amount advanced by Penn Central as "Pennsylvania Railroad Co. Loan Account."

On April 12, 1966, prior to the conclusion of the Letters of Agreement, Grace Line filed a petition in the United States District Court for the Southern District of New York (Admiralty Court), Docket No. 66 AD 363, in admiralty, for exoneration from or limitation of liability pursuant to the statute providing Limitation of Vessel Owner's Liability, 46 U.S.C. §185 (A. 1a-2a), alleging, *inter alia*, that the collision and resulting damages were caused wholly by and due solely to the fault and negligence of the owner of the bridge and those in charge of operating it. Pursuant to the statutory mandate, Grace Line posted an *ad interim* stipulation for value, with surety, in the sum of $1,006,041.22, and a monition was issued to claimants.

Because of Grace Line's allegations, Long Branch, as owner and operator of the bridge, filed an answer admitting the jurisdiction of the Admiralty Court, denying responsibility and alleging that the damages were caused by the fault of the ship and her owner. No other answer to the petition was filed. On May 23, 1966, Long Branch,

Penn Central and C.N.J. filed a claim in the admiralty proceeding against Grace Line and S.S. Santa Isabel in the aggregate amount of $1,700,000, made up as follows: Long Branch, for repair of drawbridge and providing substitute bus service $900,000; and, for consequential damages, Penn Central $300,000, and C.N.J. $500,000.

Shortly thereafter, the three railroads also invoked the jurisdiction of the Admiralty Court by filing a libel and complaint against Moran Towing and Transportation Co., Inc., (Moran) 66 Ad. 561, alleging that the collision was caused by the negligence of the pilot furnished the S.S. Santa Isabel by Moran. In its approval of the settlement with Grace Line, the Admiralty Court noted that the libel and complaint against Moran was being dismissed with prejudice (A. 6a).

All pleadings in the Admiralty Court were filed prior to the filing of C.N.J.'s petition for reorganization under Section 77 of the Bankruptcy Act, 11 U.S.C. §205, in the United States District Court for the District of New Jersey (Reorganization Court) on March 23, 1967. Pursuant to an order of the Reorganization Court regarding the filing of claims against C.N.J., Penn Central filed a claim for the amount that it advanced to Long Branch on behalf of C.N.J., referring, however, to the admiralty proceeding, and stating that "Any sums recovered in the said litigation by way of judgment or settlement on behalf of Long Branch will be used to repay advances made to Long Branch by Claimant on behalf of itself and Debtor. Such recoveries will reduce *pro tanto* the claim set forth herein."

In 1968, counsel for the three railroads in the admiralty proceeding recommended that they accept a settlement of $1,150,000 from Grace Line subject to payment of a counsel fee of $110,000. In accepting the settlement offer, the railroads agreed that C.N.J. would

receive $205,748.98 net and Penn Central $834,251.02 net, of which $740,482.95 represented repayment of its advances to Long Branch.

C.N.J. petitioned the Reorganization Court for permission to join in the settlement and the agreed to distribution. Penn Central supported C.N.J.'s petition, and Reading Company, a creditor of C.N.J., opposed it. Long Branch was not and is not a party in the reorganization proceedings.

Prior to its final decision on C.N.J.'s petition, the Reorganization Court on August 6, 1969 authorized C.N.J. to join in the aggregate settlement with Grace Line of $1,150,000 and in the payment of the counsel fee incurred by the railroads. The Reorganization Court also authorized C.N.J. to join the other Railroads in taking any action necessary to deposit the balance of the settlement money in the Registry of the Admiralty Court in the limitation of liability proceeding, thus recognizing the jurisdiction of the Admiralty Court, which it later ignored.

Subsequently, on September 5, 1969, the Admiralty Court entered an order (A. 5a), consented to by the three railroads, adjudging Grace Line entitled to shipowner's statutory limitation; ordered it to pay $1,150,000 to Long Branch, Penn Central and C.N.J. in full settlement of and satisfaction of their claims, less counsel fee; and directed that the $1,039,172.96 balance be converted into an interest bearing security or time deposit registered in the names of Long Branch, Penn Central and C.N.J., and *"deposited in the Registry of this Court, subject to the further order of this Court regarding distribution of the monies represented by said security."* (Emphasis added.) This fund, together with accrued interest and minus the amounts over which there is no dispute, remains in the Registry of the Admiralty Court.

On June 21, 1970, Penn Central filed its petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania.

On August 25, 1970, the Reorganization Court issued its memorandum, on the basis of which it subsequently entered an order. The memorandum opinion denied approval of C.N.J.'s request for authority to join with the other railroads in the agreed to distribution of the settlement fund. In so doing, the court did not merely deny authority to C.N.J. to participate in the proposed distribution, leaving the three railroads to make due proof of their respective claims before the Admiralty Court, but, as found by the Court of Appeals, the Reorganization Court undertook to adjudicate the respective rights of the railroads with respect to the settlement proceeds in the Registry of the Admiralty Court, fixing the specific amounts of payments to be made out of the Registry. The Reorganization Court held that Penn Central was not entitled to recoup from the Registry the $370,241.47 it had advanced to Long Branch on behalf of C.N.J., because, in the court's opinion, it was not a subrogee of C.N.J. as to this portion of the advance to Long Branch, but merely an unsecured creditor of C.N.J.

Penn Central appealed, contending that (1) the Admiralty Court has exclusive jurisdiction as to the distribution of the fund in its Registry and that the Reorganization Court erred in directing eventual disposition of the fund, and (2) that the Reorganization Court erred in holding that Penn Central was not entitled to distribution from the Registry of the $370,241.47 it had advanced to Long Branch on behalf of C.N.J.

The Court of Appeals agreed with these contentions. It held that the Admiralty Court's jurisdiction is exclusive

with respect to distribution among claimants of a fund in its possession which is the fruit of a settlement in a statutory limitation of liability proceeding, where, as here, the claims exceed the fund. Accordingly, it reversed for lack of jurisdiction the holding of the Reorganization Court that Penn Central is not entitled to distribution from the Registry of the $370,241.47 it advanced to Long Branch on C.N.J.'s behalf, and vacated the court's Order No. 368.

Stating that although it was not critical, or essential to its stated disposition, the Court of Appeals went on to consider Penn Central's challenge to the Reorganization Court's holding that it was not entitled to distribution from the Registry of the amount that it had advanced to Long Branch on C.N.J.'s behalf, and found that the Reorganization Court erred in its construction of the Letters of Agreement between Penn Central and C.N.J. The Court concluded with these observations (Pet. A. 15a):

> The Reorganization Court disregarded these undisputed facts: Long Branch is the claimant in the Admiralty Court for the $740,482.95 damages incurred by it as a result of the drawbridge accident, and it alone can be compensated by the admiralty Registry for its damages outlay; the circumstance that on its recovery from the Registry of its damage expenses Long Branch will repay to PRR the advances it made to finance such expenses is irrelevant to any PRR-Central status as to these advances.
>
> The result reached by the Reorganization Court would grant a 'windfall' to the bankrupt Central of the $370,241, advanced by PRR to Long Branch on Central's behalf, at the expense of the bankrupt Penn Central, PRR's successor. Such a result cannot by any stretch of the imagination be termed equitable and it does violence to the traditional concept of a bankruptcy court as a court of equity.

In a concurring and dissenting opinion, Circuit Judge Adams disagreed with the holding of the court on the

exclusive jurisdiction of the Admiralty Court, but agreed with the court's conclusion regarding Penn Central's entitlement with respect to distribution of the fund, because of which he would have reversed and remanded for proceedings consistent with such analysis.

REASONS FOR DENYING THE WRIT

In the "Questions Presented" in its petition, C.N.J. posed three questions which it claimed should be determined by this Court: (1) whether the decision of the United States Court of Appeals was an improper limitation of the jurisdiction of the Reorganization Court under the Bankruptcy Act, (2) whether such decision is in conflict with the decisions of this Court, and (3) whether the Court of Appeals has decided an important question of Federal jurisdiction involving two Federal courts in different circuits which should be settled by this Court. No further reference was made to the second and third questions, C.N.J.'s argument being directed only to the first.

This case turns entirely on its particular facts and circumstances and presents no question of general importance. Therefore, the question does not warrant review by this Court.

Here there were admiralty claims arising out of damage to the bridge by the ship. The owner of the ship brought its petition for exoneration from or limitation of liability (46 U.S.C. §185) (A. 1a-2a). Pursuant to the statutory mandate, the ship owner posted security which eventuated in the fund now on deposit in the Registry of the Admiralty Court, and a monition was issued requiring all claimants to make their claims in that court. Adversary proceedings were had in the Admiralty Court in which

Long Branch answered and all three railroads duly filed their claims. There is a judgment of the Admiralty Court providing for payment by Grace Line of the settlement amount to the three railroads and directing the three railroads to deposit the proceeds in the Registry of the court "subject to the further order of this Court regarding distribution of the monies." Rule F.(8) of the Supplemental Rules, Fed. R. Civ. P. (A. 2a), applicable to admiralty actions for exoneration from or limitation of liability, provides for distribution of the proceeds among claimants by the admiralty court.

In these circumstances, the Court of Appeals held that the Admiralty Court has exclusive jurisdiction and reversed for lack of jurisdiction the order of the C.N.J. Reorganization Court which sought to adjudicate distribution of the fund. In addition to the authorities cited by the Court of Appeals, its decision is further supported by other holdings of this Court establishing the right of an admiralty court completely to dispose of a fund in its possession. In *Ex Parte Slayton*, 105 U.S. 451, 452-453, this Court stated:

> Any court, therefore, which gets actual possession of the things to be transferred, and about which the concourse of claimants is to be had, is a court of competant jurisdiction to try the questions that will properly arise upon the apportionment to be made . . .
>
> . . . The jurisdiction of the court is not dependent at all on the amount, but on the rightful possession of that which is to be divided.
>
> . . . With the possession and control of the property the court has jurisdiction.

This Court has held that an admiralty court has jurisdiction to determine cross-claims between parties to a limitation proceeding since the admiralty court had the

power to adjudicate all the demands made. *British Transport Commission v. United States*, 354 U.S. 129, 133, 135-142. An admiralty court has the jurisdiction "necessary to the complete adjustment of rights over which admiralty has independent jurisdiction." *Swift & Co. Packers v. Compania Colombiana Del Caribe*, 339 U.S. 684, 693.

The exclusive jurisdiction of the Admiralty Court and its right to give full relief to all parties before it is thus well established and there is in this case no court other than the Admiralty Court which has the *res* and all parties before it.

The firmly imbedded jurisdiction of the Admiralty Court is fortified here by the rule of priority between courts under which this Court has held that "The court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to hear and determine all controversies relating thereto." *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 77, 89.

In contrast to the jurisdiction of the Admiralty Court, the Reorganization Court did not have jurisdiction to decide the ultimate issues in connection with the proper apportionment of the fund, since the fund was not, and is not, within the summary jurisdiction of the Reorganization Court. In *In re Casco Chemical Co.*, 335 F.2d 645 (5th Cir. 1964), the court held that funds which had been deposited in the registry of the District Court pursuant to an interpleader action pending therein were not subject to the summary jurisdiction of a bankruptcy action pending in the same district.

> The fund having originated in the . . . interpleader action . . . neither the Clerk, nor the Judge, for that matter, consistent with Federal rule of Civil Procedure 67 and 28 U.S.C. Section 2041 and Section 2042,

> had the lawful power to dispose of these funds to the use of the bankrupt or the bankrupt's creditors to the exclusion of all others. *Id.* at 649.

Similarly, in *Carney v. Sanders*, 381 F.2d 300 (5th Cir. 1967), the court applied this rule to funds which had been deposited in the Registry of a state court in an interpleader action. The courts, in both *In re Casco Chemical Co., supra,* and *Carney v. Sanders, supra,* held that the funds were not in the constructive possession of the bankruptcy court.

Since the Admiralty Court was the first court of competent jurisdiction to acquire possession of the *res,* that property was thus withdrawn from the jurisdiction of all other courts. This rule prevents "unseemly conflicts between the courts." *Farmer's Loan and Trust Company v. Lake Street Railroad Company,* 177 U.S. 51, 61. In that case this Court held that the court which first obtained jurisdiction of a *res* has the power to hear and determine all controversies relating thereto.

C.N.J. contends that the filing of a claim by Penn Central in the reorganization proceeding and its appearance before the Reorganization Court "manifests a submission" by Penn Central to the jurisdiction of that court as to how the fund should be distributed. As previously noted, Penn Central's claim was contingent on nonrecovery of its advances to Long Branch in the admiralty proceeding. Penn Central's participation in the proceeding before the Reorganization Court was limited to support of the petition of C.N.J. which only sought authority to join in the settlement and in the agreed to distribution. Had the petition been granted, the matter would have been concluded without further controversy in the Admiralty Court.

Penn Central advanced, or loaned, the money to Long Branch. Long Branch is not, and never has been,

a party to the reorganization proceeding. Long Branch consented to a settlement and distribution which would relieve it of further liability to Penn Central. Therefore, any proceeding exercising jurisdiction to determine distribution adverse to Long Branch should be one wherein Long Branch is a party. The only court in which Long Branch is a party with respect to this dispute is the Admiralty Court.

Even if it were to be assumed that the Reorganization Court, rather than the Admiralty Court, had jurisdiction to adjudicate distribution of the *res* in the Registry of the Admiralty Court, the unanimous finding of the Court of Appeals that Penn Central is entitled to recover from the *res* the entire amount that it advanced Long Branch demonstrates that there is no warrant for a review by this Court. Thus, reversal on the issue of jurisdiction would not change the ultimate result. Consequently, because of its circumstances, this case does not present a matter of general importance for the Court's consideration.

CONCLUSION

The petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

Limitation of Vessel Owner's Liability, 46 U.S.C.

§183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

§185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to

time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. *R.S.* §4285; June 5, 1936, c. 521, §3, 49 Stat. 1480.

Supplemental Rules Federal Rules of Civil Procedure

Rule F. Limitation of Liability

(8) Objections to Claims: Distribution of Fund. Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided *pro rata*, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

Final Judgment and Final Injunction

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Petition

of

Grace Line Inc., as owner of the steamship SANTA ISABEL, for exoneration from or limitation of liability

A petition for exoneration from or limitation of liability having been filed herein on the 12th day of April, 1966 by the above named petitioner, as owner of the steamship

SANTA ISABEL, for any and all losses, damages, injuries or destruction occasioned, incurred or resulting on a voyage of the steamship SANTA ISABEL which began at Matarani, Peru, on February 1, 1966 and terminated at Brooklyn, New York on March 6, 1966, including a collision between petitioner's steamship SANTA ISABEL and the New York and Long Branch Railroad Drawbridge in the Raritan River, New Jersey, which occurred on March 3, 1966, or arising out of the aforesaid voyage on which the steamship SANTA ISABEL was then engaged, said petition having been filed within six (6) months after petitioner received first written notice of any claim in respect to the subject matter of said petition;

AND the petitioner having filed an *ad interim* stipulation for value with Insurance Company of North America as surety, Bond No. 286378, in the sum of $1,006,-041.22, the amount or value of petitioner's interest in the steampship SANTA ISABEL and her freight then pending, subsequently reduced by Court order on consent to $100,000.00, and the Court having issued its monition and injunction on or about the 13th day of April, 1966, citing all claimants to appear before it and make due proof of their respective claims with the Clerk of this Court on or before the 24th day of May, 1966; and claims and answers having been filed by the claimants, and the time for filing claims and answers having long since expired;

AND Grace Line Inc., the petitioner, and all claimants having claims filed herein, having entered into a settlement of their claims, or their claims having been otherwise concluded, as hereinafter set forth;

AND Grace Line Inc. and claimants The New York and Long Branch Railroad Company, Penn Central Company (successor to The Pennsylvania Railroad Company), and the Trustee of The Central Railroad Company of New

Jersey having agreed to a settlement under which Grace Line Inc. will pay to said claimants the total sum of $1,150,000 in full settlement and satisfaction of their claims presently pending in this proceeding against Grace Line Inc. and the steamship SANTA ISABEL arising out of the aforesaid collision between the SANTA ISABEL and the New York and Long Branch Railroad Drawbridge in the Raritan River;

AND, the aforesaid claimants having agreed to the amount and the distribution of said settlement fund, the agreement of the Trustees of The Central Railroad Company of New Jersey being subject to authorization by the United States District Court for the District of New Jersey in its Reorganization Proceeding, for which an application is presently pending;

NOW, THEREFORE, on the matters aforesaid, and on the proceedings heretofore had herein, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That Grace Line, Inc., as owner of the steamship SANTA ISABEL, is entitled to shipowner's statutory limitation of liability;

2. That the defaults of all persons who have sustained or claim to have sustained any loss, damages, injuries or destruction occasioned by or resulting from the collision between the steamship SANTA ISABEL and the New York and Long Branch Railroad Drawbridge in the Raritan River on the 3rd day of March, 1966, or arising otherwise during the aforesaid voyage upon which the SANTA ISABEL was then engaged, and who have not heretofore filed claims herein, be and the same are duly noted and defaulted;

3. That Grace Line Inc. shall pay to claimants The New York and Long Branch Railroad Company, Penn

Central Company (successor to The Pennsylvania Railroad Company) and the Trustee of The Central Railroad Company of New Jersey the total sum of $1,150,000 in full settlement and satisfaction of their claims.

4. That claimant Helen Herbert, individually, and as Executrix of the Estate of Woodrow W. Herbert, has previously settled her claim in this proceeding for $35,000. Stipulation withdrawing this claim was filed herein on June 3, 1969. Woodrow W. Herbert was an employee of The New York and Long Branch Railroad Company.

5. That Frank C. Smith, 2nd Officer of the SANTA ISABEL, filed a summons against Grace Line Inc. only in the Supreme Court, New York County. His attorney was served with a copy of the notice and restraining order in the limitation proceeding herein. No formal claim was ever filed on his behalf in the limitation proceeding and the claim has not otherwise been pressed.

6. That Donald C. Fuller, an employee of The New York and Long Branch Railroad Company who was working on the Raritan Bay Bridge. He sent an informal claim letter to Grace Line Inc. by his attorneys, Potter & Gagliario. The said attorneys were served with a copy of the notice and restraining order in the limitation proceeding herein. No formal claim was ever filed in the limitation proceeding and the claim has not otherwise been pressed.

7. That the contingent claim of Moran Towing & Transportation Co. Inc. against Grace Line Inc. for indemnification in the amount of $1,700,000 with respect to the libel and complaint filed by The New York and Long Branch Railroad Company, The Central Railroad Company of New Jersey, and The Pennsylvania Railroad Company, is dismissed with prejudice by consent. The libel and complaint by the above named railroads against Moran Towing & Transportation Co. Inc. in this Court

(66 Ad. 561) is being dismissed with prejudice, and by consent at the time of entry of this final judgment and final injunction.

8. The aforesaid sum of $1,150,000 to be recovered by claimants, The New York and Long Branch Railroad Company, Penn Central Company (successor by merger to the Pennsylvania Railroad Company), and the Trustee of The Central Railroad Company of New Jersey, of and from Grace Line Inc. and the S.S. SANTA ISABEL shall be paid by Grace Line as follows:

A. The sum of $1,039,172.96 shall be paid to claimants The New York and Long Branch Railroad Company, Penn Central Company (successor to The Pennsylvania Railroad Company), and the Trustee of The Central Railroad Company of New Jersey and converted by them into an interest bearing security or receipt therefore of a time deposit ? ? ? ? registered in their names, and said security shall be deposited in the Registry of this Court, subject to the further order of this Court regarding distribution of the monies represented by said security;

B. The sum of $110, 827.04 shall be paid to Bigham, Englar, Jones & Houston, admiralty counsel, for their legal fee and disbursements in representing said claimants; and it is further

ORDERED, ADJUDGED AND DECREED that, upon entry and satisfaction of this final judgment and final injunction, all persons having sustained or claiming to have sustained any losses, damages, injuries or destruction occasioned by or resulting from the collision beteen the steamship SANTA ISABEL and The New York and Long Branch Railroad Company Drawbridge in the Raritan River, New Jersey, on March 3, 1966, or otherwise arising during the aforesaid voyage on which the SANTA ISABEL was then engaged, be and they hereby are permanently en-

joined and forever restrained from instituting or prosecuting in any manner whatsoever, or in any other proceeding, any suit, action or claim in any Court whatsoever, against the petitioner, Grace Line Inc., or it successors, agents, servants or assigns, or against the steamship SANTA ISABEL or its freight monies, or against any other vessel or property of said petitioner, Grace Line Inc.

Dated, New York, N.Y.
Sept. 5, 1969

U.S.D.J.

We hereby consent to the entry of this final judgment and final injunction this 29th day of August, 1969.

KIRLIN, CAMPBELL & KEATING
Attorneys for Petitioner

By: /s/ Alexander Rugain
A Member of the Firm

BIGHAM, ENGLAR, JONES & HOUSTON
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By: /s/ Douglas A. Jacobson
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